

their authority beyond management of the public rights-of-way and the protection of the public safety and welfare.⁵⁸

To the extent that the PUD is entitled to manage its rights-of-way, its method of management may not impose such regulatory burdens on telecommunications providers as to create a “third tier” of regulation. USA Media has obtained the necessary authorizations from the State of California and Truckee to implement broadband services.⁵⁹ Requiring USA Media to file applications and undergo additional examination and approvals other than safety concerns and traditional rights-of-way management adds an additional, burdensome level of regulation that effectively prohibits USA Media from providing broadband services to the residents of Truckee.⁶⁰ The requirement to file applications and make unnecessary changes to pre-existing attachments exceeds the PUD’s authority to regulate its local rights-of-way under the Commission’s definition of permissible regulation. Such regulation is therefore inappropriate and impermissible under Section 253.

IV. THE EXCEPTIONS TO SECTION 253 DO NOT PROTECT THE PUD’S ACTS

A. Section 253(b) Does Not Apply

As noted above, once the Commission has determined that the actions of a locality fall under Section 253(a), it must consider whether those acts may be protected from preemption by Section 253(b).⁶¹ Under this sub-section, the acts will survive if they are competitively neutral

⁵⁸ *Id.* at ¶ 8.

⁵⁹ In fact, the franchise agreement with Truckee requires USA Media to provide interactive data services. *See supra* note 6 and accompanying text.

⁶⁰ The PUD’s interpretation of the License Agreement that USA Media may not provide Internet services without PUD approval reinforces the notion that the PUD is trying to impose a third tier of regulation on USA Media.

⁶¹ *Western Wireless* at ¶ 9.

and “necessary to ... protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.”⁶²

The PUD cannot demonstrate that the conditions imposed on USA Media to obtain access to utility poles are “competitively neutral.” In imposing application, relocation, and new utility pole construction requirements, the PUD is acting in its own interests and favoring its own fiber network. The PUD has acknowledged the significance of being “first to market” and its actions are designed to delay USA Media’s opportunity to be that first entrant. The cost to the PUD for freeing up additional utility pole space for attachments is also a significant factor in its actions. However, competitive neutrality requires such neutrality “among the entire universe of participants and potential participants in a market.”⁶³ The PUD’s requirements are imposing conditions on the incumbent, USA Media, which will not also be borne by the PUD when it decides to enter the fiber network market. These conditions are slowing progress on the system upgrade such that USA Media will certainly be delayed in completing the overlash project and may lose the first to market advantage. Furthermore, the PUD’s acts are delaying the launch of high-speed Internet services in contravention of the Commission’s explicit goals.⁶⁴ Beyond the inequity of imposing these regulations, the PUD’s new requirements directly favor the new entrant to the market – which will most likely be the PUD itself. Imposition of regulations that

⁶² 47 U.S.C. § 253(b). The PUD cannot possibly rely on the universal service provisions of this section as a rationale because the services to be provided are not local phone services, but rather enhanced video services and broadband services such as Internet access which are not eligible for universal service funds.

⁶³ *Silver Star Telephone Company, Inc., Petition for Preemption and Declaratory Ruling, Memorandum Opinion and Order*, FCC 98-205 (1998) (“*Silver Star Telephone*”).

⁶⁴ In promoting the objective of advancing high-speed Internet access, the Commission has “sought to reduce barriers to entry, encourage investment, and facilitate the deployment of high-speed services.” High-Speed Access Inquiry at ¶ 3.

favor any party – whether incumbent or new entrant – are impermissible under Section 253.⁶⁵

The fact that the PUD is trying to advance its own interests in the process provides additional justification for refusing to permit the PUD to take advantage of the safe harbor provisions of Section 253(b).

Furthermore, the PUD cannot demonstrate that the requirements it is trying to impose on USA Media are necessary for the public safety and welfare, for continued quality of telecommunications services, or to safeguard the rights of consumers. In most instances, the PUD's actions will actually have the opposite effect by extending USA Media's time to market, limiting the amount and the quality of programming USA Media can make available on its service, and restricting USA Media's ability to provide new services.

With respect to the public safety and welfare issue, the PUD admitted in the course of the federal court proceedings that USA Media's pole attachments would not create a safety hazard if they complied with G.O. 95.⁶⁶ The court also acknowledged this by ordering the PUD not to place conditions on applications except for lack of compliance with G.O. 95. All but a small minority of USA Media's current attachments are in compliance with this safety standard, and USA Media does not object to making minor corrections to the remaining attachments to comply with G.O. 95. However, in many instances, the changes that the PUD has requested that USA Media make to its attachments will put those attachments in violation of the safety regulations or provide only the absolute minimum of compliance with G.O. 95. The PUD's requirements are therefore in contravention of the safety standards imposed for such attachments.

⁶⁵ *Silver Star Telephone* at ¶ 10.

⁶⁶ See Transcript from Temporary Restraining Order Hearing, *Truckee Donner Public Utility District v. USA Media Group, LLC*, CIV S-99-2326 DFL PAN (E.D. Cal. Dec. 1, 1999), the relevant portions of which are attached hereto as Exhibit 12.

In the course of addressing these applications, the PUD has alleged general safety risks that overlashing will create with respect to the utility poles, including weakening of poles, risk to utility workers accessing electrical wires, and increased needs for maintenance.⁶⁷ The Commission has rejected similar generic claims of safety risks for construction of conduit and installation of fiber optic facilities along roadways – a far more intrusive procedure than the overlashing project proposed by USA Media.⁶⁸

Moreover, the PUD exaggerates the true risks posed by overlashing. First, the Commission has already found that overlashing imposes no significant burdens on poles.⁶⁹ The facts also undercut the PUD's concerns. With respect to the weakening of poles, the fiber optic cable will add approximately fifteen pounds of weight to each pole – a de minimis amount compared to the weight of coaxial cable. Eventually, the overlashing of fiber optic cable will also result in removal of some of the heavier coaxial cable and amplification equipment which will in the long run remove weight from the poles. Furthermore, the PUD's proposed relocations of attachments will themselves weaken the poles since every additional hole drilled into a utility pole inherently weakens the strength of the pole. Finally, as noted above, the court has already determined that compliance with G.O. 95 requirements is sufficient to ensure compliance with public safety standards.⁷⁰

As to the risks to workers needing to access electrical wires, such risks are no greater with overlashed fiber optic cable than with coaxial cable. Having overlashed fiber optic cable

⁶⁷ See Letter from Steven C. Gross, Esq., counsel to Truckee Donner Public Utility District, to Richard D. Harmon, Esq., counsel for USA Media, February 4, 2000, attached hereto as Exhibit 13.

⁶⁸ *Minnesota Order* at ¶ 55-57.

⁶⁹ Pole Attachment Overlashing Order at ¶ 59-64.

⁷⁰ Modified Preliminary Injunction at 2, lines 7-12.

will not increase the width of the current cable to such an extent that access to electrical or other wires on the utility poles is restricted. The PUD's safety objections also ignore the fact that fiber optic cable is more stable and stronger than coaxial cable, which will ultimately mean fewer outages and discontinued services resulting in less need for maintenance or repair of USA Media's own cable – a safety benefit of the overlash project. This is particularly important in the harsh Truckee winters when outages of coaxial cable are unavoidable.

Fiber optic cable will also enable upgraded service quality and expanded programming options for USA Media's customers. The PUD's efforts to delay USA Media hinder the improvement in quality of services and will severely harm USA Media's efforts to provide new telecommunications services. This result cannot be interpreted as "safeguarding the rights of consumers." Because the PUD cannot demonstrate that its interpretation of the License Agreement is competitively neutral, nor that it serves the public safety and welfare, advances consumer rights, or increases the quality of telecommunications services, the PUD is not entitled to take advantage of the safe harbor provision of Section 253(b).

B. Section 253(c) Does Not Apply

The PUD's only remaining potential defense to avoid preemption is to argue that enforcement of the License Agreement is within the ambit of management of rights-of-way and is therefore protected from preemption under Section 253(c). However, the PUD's acts reach beyond traditional rights-of-way management as defined by the Commission, are blatantly discriminatory, and therefore do not qualify for this exception.

Under Section 253(c), localities may manage their rights-of-way without risk of preemption provided that: 1) compensation for rights-of-way is fair and reasonable and imposed in a competitively neutral and nondiscriminatory manner and 2) the management of those rights

is done on a nondiscriminatory basis.⁷¹ USA Media recognizes the PUD's authority to manage its rights-of-way through the License Agreement. However, requiring USA Media to submit applications for overlashing and undertake additional expense to relocate current attachments and install new utility poles is neither fair nor reasonable, nor is the requirement being imposed on a competitively neutral basis.

As noted above, the PUD is requiring USA Media to relocate attachments that were previously approved by the PUD under the License Agreement in order to clear space on the utility poles to enable the PUD to install its own fiber optic network. Any other new entrant would be required to pay for such clearance itself, but the PUD is using its control over rights-of-way to enhance its own position as a new entrant. As the Commission has noted, "[l]ocal requirements imposed only on the operations of new entrants and not on existing operations of incumbents are quite likely to be neither competitively neutral nor nondiscriminatory."⁷² The reverse is also true: requirements imposed only on existing operations and not on new entrants cannot be considered competitively neutral, particularly when the entity imposing the requirements is poised to be the new entrant.

The Commission has also in the past clearly – and narrowly – defined rights-of-way management. The types of activities that localities may regulate include coordination of construction schedules, determination of insurance, bonding, and indemnity requirements, establishment and enforcement of building codes, and tracking the various entities using rights-

⁷¹ 47 U.S.C. § 253(c). "[W]hen a local government chooses to exercise its authority to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, it must do so on a competitively neutral basis." *TCI Cablevision Order* at ¶ 108.

⁷² *TCI Cablevision Order* at ¶ 108.

of-way.⁷³ However, nothing permits the PUD, under the guise of right-of-way management, to impose unwarranted expenses and unreasonable conditions on USA Media. The PUD has provided no substantive evidence that USA Media's overloading project would impact in any way the attachments previously approved by the PUD and maintained on the utility poles for many years. The PUD cannot now use rights-of-way management as a shield to effectively prohibit USA Media's entry into the broadband telecommunications market. Because the PUD's acts do not fall within the intended realm of rights-of-way management covered by Section 253(c) and cannot possibly be construed as "competitively neutral" or nondiscriminatory, the PUD is not entitled to the exception offered by Section 253(c).

V. THE PUD'S ATTEMPTS TO PROHIBIT USA MEDIA FROM PROVIDING INTERNET ACCESS ALSO VIOLATE SECTION 253

Beyond the prohibitions on overloading the PUD is attempting to impose on USA Media, the PUD has also taken the position that USA Media may not provide any Internet services under the terms of the License Agreement regardless of whether such services are provided across new fiber optic cable or the coaxial cable facilities that are already in place. Such a prohibition on the provision of high-speed Internet services attempts to impose a legal requirement directly prohibiting USA Media from providing telecommunications services, and is therefore in violation of Section 253.

As discussed above, the manner in which local governments interpret contracts with telecommunications providers can constitute a "legal requirement" that violates Section 253.⁷⁴ The PUD has argued that the License Agreement does not permit USA Media to provide Internet

⁷³ *Minnesota Order* at fn. 129; *TCI Cablevision Order* at ¶ 103.

⁷⁴ *See supra* page 14-15.

or other services beyond “CATV for the distribution of television programs.”⁷⁵ Through the License Agreement, the PUD is attempting to prohibit USA Media from providing Internet services – despite the fact that the provision of cable television services includes provision of Internet and other cable broadband transmission services across the cable system.⁷⁶

For reasons similar to those discussed above, the PUD’s restriction on USA Media’s ability to provide Internet services does not fall within the safe harbor of Section 253(b) or (c). First, there is no public safety or welfare rationale that would entitle the PUD to restrict provision of Internet service under Section 253(b). Furthermore, preventing USA Media from providing such services actually reduces the quality of telecommunications services made available to consumers in Truckee and compromises the rights of those consumers to such broadband services. Second, the PUD cannot demonstrate that its restriction is based on rights-of-way management because the PUD asserts that USA Media is not entitled to provide Internet services regardless of whether the current pole attachments are upgraded, overlashed, or changed in any other way. The PUD’s rights-of-way management is certainly not impacted by the type of content or services provided through USA Media’s wires.

The real reason the PUD wants to restrict USA Media’s provision of services is revealed in a letter from the PUD’s general manager to USA Media earlier this year, in which the PUD stated:

We were unable to reach an agreement [to work together on a fiber optic network], and it is clear that both companies will pursue their business interests

⁷⁵ See Holzmeister Letter.

⁷⁶ See 47 U.S.C. § 541(b)(3) (relating to franchising requirements for cable systems). See also *AT&T Corp. v. City of Portland*, 216 F.3d at 878-79.

independently. In order to do that we believe that TDPUD and USA Media should execute a new pole attachment agreement.”⁷⁷

This language suggests that the PUD would not have required a new pole attachment agreement if USA Media had entered into a joint venture with the PUD. The PUD is apparently asserting that the License Agreement does not permit Internet service to be provided only to prevent USA Media from providing services that compete with the PUD’s own plans. Like the PUD’s actions with respect to the pole attachments, the PUD is grasping at any straw to prevent USA Media from launching a fiber optic network prior to the PUD’s doing so.

Regardless of the rationale behind the PUD’s interpretation, the use of a legal requirement, such as the License Agreement, to prevent USA Media from providing telecommunications services in the form of high-speed Internet and other services, is prohibited by Section 253 and should be preempted.

CONCLUSION

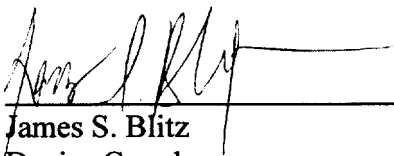
The PUD’s interpretation of the License Agreement has resulted in the imposition of burdensome requirements on USA Media that delay and effectively prohibit USA Media from overlying its existing coaxial cable with fiber optic cable. The PUD’s motivations for imposing these requirements is apparently to delay USA Media’s launch of its new service so that the PUD’s own services can more effectively compete with USA Media’s services. However, the effect of these requirements on USA Media’s entry into the broadband telecommunications services market is such that it will effectively prohibit USA Media from entry into that market – contrary to Section 253 and the policies of the Act. The PUD’s

⁷⁷ Letter from Peter Holzmeister, General Manager, Truckee Donner Public Utility District, to Jim K. Faircloth, Executive Vice President & Chief Operating Officer, USA Media, August 3, 2000, attached hereto as Exhibit 14.

interpretation and enforcement of the License Agreement violates Section 253(a) and should therefore be preempted. The PUD also cannot demonstrate that its enforcement of the License Agreement is entitled to any of the exceptions provided in Section 253(b) or Section 253 (c).

WHEREFORE, in view of the foregoing, USA Media respectfully requests that the Commission issue a declaratory ruling ordering that the PUD's interpretation of the License Agreement, the imposition of requirements on USA Media under said License Agreement, and the outright prohibition on providing Internet services under the License Agreement violate and are preempted by 47 U.S.C. § 253(a) and (d) and are therefore null and void.

Respectfully submitted,
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Dated: November 3, 2000

EXHIBIT 1

Strategic Plan for Truckee Donner Public Utility District, April 1, 1999

STRATEGIC PLAN FOR TRUCKEE DONNER PUBLIC UTILITY DISTRICT

April 1, 1999

1. INTRODUCTION

In preparing a Strategic Plan for Truckee Donner Public Utility District it is important to take a look at the large society in which we live. We need to have a basic sound concept of what that large society is like, and how it is changing. Many researchers document the basic components of our present society, and futurists comment on trends that help us perceive social trends. This section of the strategic plan attempts to set out an overview of the larger society in which Truckee Donner PUD operates. It describes the changes that are occurring in society, and opines that Truckee is a reflection of larger society. The world is changing and Truckee is changing with it.

a) At a recent California Municipal Utilities Association conference, Steve PonTel, President of La Jolla Institute described the choices that communities have. He says there will be smart communities and ghost towns. The smart communities will recognize that the new economy is based on knowledge, it has a global perspective, and it is networked. Connectivity and quality will matter to citizens of smart communities. Ghost towns will ignore society's trends, and will fail to meet the needs of its citizens.

b) Society is getting older; more retired persons are living in Truckee. Family units are smaller than in the past. Truckee is becoming more affluent. Our customers are able to afford and expect to purchase consumer products that permit them to earn a living and make their lives more convenient.

c) Society is becoming more and more electronically connected. More homes and businesses are routinely using the Internet. Communications technologies such as cell phones, fax machines, computers, and pagers are becoming interconnected. Their presence is now ubiquitous in our society. New technologies are being introduced at an increasingly rapid pace.

d) Telecommuting technologies are allowing more people to work from their homes. This is changing the way homes are being built and the technological services that homeowners will want delivered to their homes.

e) California's population will be increasingly comprised of foreign-born persons, primarily Asiatic and Hispanic. Women in California will continue to play an increasing leadership role in business and society.

f) The population of Truckee is growing at a rate of approximately 2.5 percent per year. This growth is expected to continue for the foreseeable future. This growth will add approximately 300 new homes per year to our customer base, and commercial growth will continue at a comparable pace.

2. CLARIFY THE BUSINESS WE ARE IN AND OUR MISSION

An important exercise in strategic planning is to clarify for ourselves and for our employees what business we are in. A mission statement can be a powerful presentation of our purpose in the community, and define the values we embrace in the conduct of business.

This Strategic Plan recognizes that Truckee Donner PUD is actively involved in three distinct business efforts, and suggests that we should consider becoming involved in one additional business effort. Our three current business units are:

- Water supply and distribution
- Electric distribution
- Electric power supply (aggregation)

The new business unit suggested for further strategic evaluation fiber optic wire service.

The mission statements for the District as a whole and the current business units is as follows:

a. **The District mission** is to be valued by our customers as a local agency with a long term service record, committed to the well-being of the Truckee community, bringing innovation, competence and trustworthiness in the delivery of water and electric services.

b. **The water business unit mission** is to provide moderately priced, high quality potable water, delivered at the pressure and quantity sufficient to meet the needs of residences and businesses in the Truckee Donner PUD service territory.

c. **The electric distribution business unit mission** is to provide low cost and reliable delivery of electric energy, at voltages sufficient to meet the needs of the residences and businesses in the Truckee Donner PUD service territory.

d. **The mission of the electric power supply business unit** is to be the aggregator of choice for every residence and business located in the Truckee Donner PUD service territory, contracting for delivery of low cost electric energy and capacity in sufficient quantity to meet the needs of our customers.

The mission statement for fiber optics service, should the District choose to enter that business at the conclusion of further study, could be as follows:

e. **The mission of the fiber optics business unit** is to provide fiber optic infrastructure to every residence and business in the Truckee Donner PUD service territory and sphere of influence for use by third party service providers, thus enhancing

the opportunity for the Truckee community to benefit from the convergence of the computer, telecommunications, entertainment and electric industries.

3. ASSESSMENT OF THE BUSINESS ENVIRONMENT

The Strategic Plan has described the large society in which we operate and has looked at some trends to help us understand how that society may be changing. The Strategic Plan has stated clearly the business we are in and the District's mission. The plan now needs to evaluate the specific business environment in which we operate. This description differs from the societal description in Section 1. That Section took a very broad look at society. This Section will describe a more specific set of business factors that relate to the water and electric industry. This Section will describe institutions, industry trends and competitors that need to be strategically handled for our District to succeed in fulfilling its mission.

a. Water industry business environment:

The water industry is highly regulated, and we expect more regulations from the Federal and State governments intended to insure a safe drinking water supply. We will be required to monitor our water supply for more contaminants in the future, and report to our customers on the quality of their drinking water. It is probable that groundwater may need to be treated for removal of arsenic and other contaminants in the future.

There is some indication that federal water regulators may turn their attention to groundwater contaminants. Groundwater supplies experience far less bacterial contamination, but may experience greater viral contamination. This may lead to regulations mandating filtration of groundwater in the future.

Customers are becoming increasingly aware of water quality issues. They demand pure, safe, taste-free water. Inexpensive in-home water treatment systems are being marketed to them. In a recent telephone survey conducted by our District a small number of our customers responded that they drink bottled water. The water served by our District to most of our customers is disinfected by use of chlorine, which has an objectionable odor and taste if not done properly. We may soon be required by State law to add fluoride to our water as a way to promote dental health. This program is likely to be controversial.

Our access to a water supply will be greatly regulated in the future. Our water supply will also be subject to quantity limits. The Truckee River Operating Agreement (TROA), which will probably be signed within the next two years, will regulate the development of future wells, and the quantity of water that can be diverted and depleted from the Truckee River Basin. TROA will require us to be active in regional water issues.

The quality of the water in the groundwater basin is critical to our ability to keep water costs low. We will need to actively promote a groundwater management program, probably in conjunction with other users of the basin.

Growth in customer base will require water system expansions. As the existing system ages we will need to replace various components. The expansion and replacement of the water system facilities is costly, and will require a funding plan that minimizes the impact on our general water rates. We will need to constantly update our water master plan and have a clear strategy for financing.

Growth in our customer base will provide us with increasing annual revenues from sale of water. Growth will also provide funds to expand our water system infrastructure.

District staff is preparing a white paper analyzing the basic assumptions in our design of water system infrastructure. New technologies are appearing which may offer opportunities for us to design our water system differently and save money. Changes in fire suppression technology may have an effect on our need to create fire flow infrastructure.

Limitations on our water supply may require us to implement conservation measures in the future. The application of water for landscaping accounts for a major portion of our water use in a year. At some point it may be advisable to encourage low water use landscaping.

Nevada and Placer County LAFCOs are making decisions that may limit our District's future service territories. We will need to have a clear understanding of the future territory that our District is expected to serve. We need to have an internal policy regarding the territory that we prefer to serve, and a strategy for promoting our interests in that territory.

Glenshire Mutual Water Company, Donner Lake Water Company and Placer County Water Agency's Lahontan system are small water purveyors that serve territory adjacent to our service territory and are in the District's sphere of influence. We currently have very little relationship with these entities. A more active and cooperative business relationship may be of interest to all parties.

It appears that our water customers are using more water on the maximum day. During the past several years our system design planning was based on an average use per customer of 800 gallons on the maximum day. We design the size of our water system facilities to serve this maximum day demand. More recent water usage statistics suggest that our customers now use an average of 900 gallons on the maximum day. We are finding that residences are increasingly having more fully developed landscaping. Our average maximum day usage of 900 gallons per customer is still far below the 1,500 gallons experienced in other regions of California. Our average daily usage, averaged throughout the entire year is still 500 gallons per day.

Our District provides facilities for use by the Truckee Fire Protection District in support of their suppression efforts. Our pumps, water storage tanks and water mains are sized to provide fire flow water. The Insurance Rating Office continues to increase the recommended amount of water that should be available for fire suppression, while the

fire suppression service continues to rely less and less on water to extinguish fires. Fire retardant building materials, smoke and fire alarms that provide early fire detection, and chemical fire suppression technologies have reduced the reliance on water. Yet we continue to construct expensive water facilities.

b. Electric industry business environment:

The single biggest factor in our electric industry business environment is deregulation. Competition is replacing the traditional monopoly structure of the industry. The early effect of deregulation is confusion. As the groundrules of the new industry become clearer, our District will find that it is doing business with a new set of entities. We will find that we have a new relationship with our customers. Competition will eventually drive prices down and we will need to have competitive prices for the services we provide.

The electric utility industry is merging with the natural gas, cable, telecommunications, and computer industries. Products and services are crossing lines. Industry commentators are suggesting that customers will want to take advantage of a new array of products and services that can be offered by an electric utility working in partnership with other energy service providers.

In surveys that are being conducted, customers are expressing a consistent preference for how they want to be served. They want low price, reliable service, quick response to outages, convenient business practices, and helpful customer service representatives. Customers currently find electric deregulation confusing, and are not favorably inclined to participate in electric deregulation. They may become more interested in it over time, if it is made easy for them and they can save money.

Our relationship with Sierra Pacific Power Company (SPPCo) has been contentious for many years. Deregulation is giving us new opportunities to achieve independence from SPPCo control. We are continuing to experience resistance from SPPCo, but the trend is in our favor. We have a new relationship with Idaho Power Company, which will require us to have a continuing, long-term relationship with SPPCo, although not the relationship that SPPCo prefers.

Truckee Donner PUD is a member of the Northern California Power Agency (NCPA). NCPA provides schedule coordination services for our District, and supports us with engineering and regulatory services. NCPA helps us through joint action to participate in industry matters that would be difficult for us to do alone.

Agencies and associations near our borders are becoming interested in evaluating benefits of being involved in deregulation. They are contacting our District for advice and technical assistance.

Growth in our electric service territory has been consistent for the past twenty years. We expect the growth to continue at a rate of about 2.5 percent for the next several years.

This growth provides our District with increasing revenues from sale of electric services. The growth also provides funds for electric system infrastructure expansions.

c. The fiber optics business environment:

Fiber optics is a technology that offers vastly improved telephone, cable television, and data communications services at a low price. There may be an opportunity for Truckee Donner PUD to provide fiber optic infrastructure in the community thus encouraging other service providers to offer enhanced services.

Weststar Communications, Inc. is being acquired by USA Media Group, Inc, and they are planning to install some kind of fiber service to cable television service. There may be a bigger role for fiber in Truckee.

In order to determine the nature of the opportunity for fiber in Truckee would require a feasibility study.

d. The District's competitors effect our business plans:

Since Truckee Donner PUD is a public agency, we do not often think in terms of having competitors. Private enterprise businesses have competitors. Public agencies are usually thought of as promoting the public good, without being impacted by or imposing impacts on other entities. However, there are agencies that compete with us to serve our customers, and there are agencies that take actions that impair our ability to fulfill our mission. These agencies can be viewed as competitors.

In preparing a strategic plan it is useful to identify our competitors so we are not ignoring the effects their actions could have on us. By identifying them we are more likely to consider their potential impacts on us when we prepare our business strategies.

1. **SPPCo is a competitor.** SPPCo would benefit if our District went out of business and could then directly serve our customers. SPPCo has offered business deals to some of our larger customers in an effort to serve them directly.

2. **Southwest Gas Company** another competitor. Natural gas is an alternate fuel to electricity in space heating, water heating, cooking, and clothes drying. To the extent that Southwest Gas succeeds in serving our customers, our District loses revenues.

3. **Power marketers** could become competitors in the future as the deregulated electric industry matures, and if our District provides for direct access.

4. **Other water purveyors** are competitors to the extent that they sell water to a service territory that we prefer to serve. Because water systems are capital intensive, a water system realizes economies of scale by serving a properly sized territory. To achieve these economies of scale and keep our water rates low, we may have a strategy to serve a certain geographic territory. Other water purveyors become, then, competitors.

5. The Town of Truckee is an agency whose actions could impact our ability to achieve our mission. The Town has raised the issue of reorganizing Truckee's special districts into town departments. The Town government would benefit by having utility revenues to support municipal functions.

6. Nevada County and Placer County LAFCos are agencies that control our sphere of influence and our ability to amend our service territory. Their actions can, therefore, impact our ability to achieve our mission. Currently both LAFCos are shrinking our sphere of influence map.

7. Weststar Cable (USA Media) may be planning to install some amount of fiber optics technology. The first to install fiber may corner the market. There may be an opportunity to form an alliance with Weststar in the fiber business.

4. POSITION STATEMENT

This Section of the Strategic Plan lists in outline form the strengths and weaknesses of the district. An inventory of organizational strengths will help identify resources that are available to accomplish strategic plans. It is important to have a clear picture of an organization's weaknesses when planning strategically so that the organization avoids the temptation to overreach. A listing of weaknesses helps the organization deal with anticipated problems. It forces the organization to address its weaknesses.

a) TDPUD strengths:

Long-term presence in the community .

Low electric rates

Steady and predictable supply of monthly revenues

Financial position is healthy

Dedicated competent staff

Lack of stranded investment

Electric distribution system is becoming increasingly more reliable as we make system improvements

Low cost wholesale power from Idaho Power Company

Very low electric system debt

Plentiful supply of high quality groundwater

Customer demand for electric power is off peak in relation to the industry as a whole.

b) TDPUD weaknesses:

Moderate to high water rates

Tahoe Donner water distribution system is failing

High long term water system debt

Short annual construction season

Severe winter weather takes a toll on infrastructure

High demand for water on summer week-ends stresses water system capacity

5. ASSUMPTIONS ABOUT OUR INDUSTRY

This Section of the Strategic Plan documents assumptions about trends in the water and electric industries, and trends in the Truckee community. Understand where an industry and a community are headed is important to strategic planning.

a) Truckee will continue to grow at about 2.5 percent per year

b) Truckee will become more affluent

c) Truckee residential customers will want to use advanced communications technologies; will want to be electronically connected to the world beyond Truckee

d) Truckee is small and as such may not attract private enterprise to install advanced communications infrastructure, such as fiber optics.

e) Electric prices will come down after CTC expires in 2001

f) Residential and small commercial customers will have difficulty benefiting from deregulation without the help of an aggregator

g) Control of electric utility billing, metering, and customer lists will be an advantage in the deregulated industry

h) TDPUD will secure access to network integration transmission service

?

- i) The electric, natural gas, telecommunications, cable, and computer industries will merge, or at least overlap in more and more areas.
- j) Water prices will tend upward gradually
- k) Water usage for irrigation will continue to increase unless curbs are put in place
- l) TDPUD will come under increasing water quality regulation, possibly even a requirement for more water treatment
- m) Small water purveyors in our area will have difficulty satisfying regulators and maintaining financial health
- n) Our District's independence will continue to be challenged by the Town of Truckee and LAFCo

6. GOALS: WHAT WE WILL TRY TO ACCOMPLISH

This Section of the Strategic Plan sets forth goals for each business unit. The next section will specify how we intend to accomplish these goals. The goals are intended to give us advantage. Accomplishing our goals should help us fulfill our mission

a) Regarding the District in general:

Build a positive name brand in the community

Generate and use customer information

Build an entrepreneurial organizational culture featuring innovation, customer focus, and quality service

Provide our customers all the benefits of deregulation while avoiding its defects

Participate in influencing the legislature and regulatory bodies regarding water and power issues

Influence the policies of the Town of Truckee and the LAFCos in relation to governance issues

b) Water supply and distribution:

Maintain moderate water rates

Have a water rate structure that is considered fair by our customers

Provide water service at the service box that meets the expectations of our customers regarding pressure and quality.

Establish closer working relationships with neighboring water purveyors

Establish a sphere of influence that permits our District to serve a territory based on reasonable infrastructure economies of scale and community of interest

Protect our access to a plentiful supply of pure groundwater

Evaluate criteria for maximum day usage and its impact on our investment in water system infrastructure (900 gpd, fire flow)

Participate in regional associations involved in water management issues

Evaluate the impact on our business of serving water to golf courses using untreated water, and using on-site wells

c) Electric distribution business unit:

Provide low-cost distribution service

Provide reliable electric distribution service

Provide quick restoration of power in the event of an outage

d) Electric power supply business unit

Secure low-cost wholesale power supply

Secure access to Network Integration Transmission Service from SPPCo

Rebuild an improved business relationship with SPPCo

Retain all customers in our aggregation program

e) Fiber optics business unit

Evaluate the advisability of TDPUD entering the fiber optics business.

7. PRIORITY ISSUES CONFRONTING THE DISTRICT AND ACTION PLAN

Issue 1. Survival of the District

The first strategic issue addressed in this plan is the long-term survival of the District. There are factors in our business environment that threaten the District's very survival.

Issue 1.1: LAFCOs

- LAFCo is committed to promoting reorganizations and consolidations of Truckee's special districts. LAFCo has adopted the proposition that general purpose government (cities) is preferable to special purpose government.
- LAFCo can Initiate consolidations or mergers or reorganizations and can establish terms and conditions affecting it (such as an election).
- LAFCo has established the District's sphere of influence in Nevada County in a manner such that our service area is contiguous with that of the town.

Action Plan:

- Bring in a consultant who specializes in LAFCo issues to assist and advise the District in how to deal with the two local LAFCOs and the state issues.
- Seek to work with other agencies (for example, ACWA and CSDA) who are well informed about LAFCo.

Issue 1.2: Plan to deal with consolidation issues

- We should work in partnership with other districts
- It is desirable for our District to remain multi-county.
- The governance study prompted by LAFCo has been begun by the special districts and the town with the objective of providing more efficient services by working jointly. Work is incomplete. There are serious conflicts between the town and the districts.

Action

- Bring the governance study to a successful conclusion. Use the LAFCo consultant to comment on the draft before it is widely disseminated.

Issue 2-Electric and water systems

Portions of the District's electric and water system infrastructure are in need of repair, replacement or expansion. This second strategic issue identifies specific high priority improvements that need to be addressed.

Issue 2.1: Water delivery system

The District is committed to providing high quality water in quantities and at pressures that meet the expectations of our customers. Appendix A of this Strategic Plan sets forth an action plan to improve the water system infrastructure.

Issue 2.2. Electric system reliability

Opinion surveys conducted locally and nationally demonstrate that customers expect a high degree of reliability from their electric utility. This Strategic Plan sets forth in Appendix B an action plan to improve the district's electric service reliability.

Issue 2.3. Financial plan for water system improvement

The plan to improve the water system infrastructure is aggressive and requires the commitment of significant financial resources. Appendix C of this Strategic Plan sets forth a forecast of financial requirements.

Issue 3- Electric industry deregulation

The three parts of the electric utility industry in California have been unbundled. The power generation function has been deregulated. The transmission function remains regulated, but has been transferred to an independent system operator to operate. The distribution function remains regulated at the local level. This huge change in our industry has changed the District's relationship with key industry participants. Our success in the new electric utility industry depends on our ability to adapt to the new environment. This third strategic issue gives rise to a group of sub-issues that need to be addressed in our strategic plan.

Issue 3.1: Define the District's role in a deregulated environment

- (1) We provide benefit to the community. Residential and small commercial customers will benefit from deregulation only if they aggregate.
- (2) New consumer services will cross the lines between electric power and telecommunications. Our District will make sure those new services are available in Truckee by providing necessary infrastructure.
- (3) We may need to grow beyond our current service territory to survive. That means redefining the community we wish to benefit.
- (4) The District will provide infrastructure for water, electric, and fiber optics.
- (5) Our District will offer energy services of some type, evaluated on a case-by-case basis. Most new energy and telecommunications services will be provided by other business entities.

Action

- (1) Promote our electric power aggregation business
- (2) Conduct a study of the feasibility of providing fiber optic infrastructure to the Truckee community
- (3) Postpone evaluation of other electric and telecommunications consumer services until the year 2000.

Issue 4- Plant and facilities

Our current District vehicle parking and material storage space is inadequate. As the District operation continues to grow our problem will become acute. This fourth strategic issue contains a number of sub-issues that need to be addressed in the strategic plan.

Issue 4.1. Headquarters building

- (1) There is not enough conference room space to accommodate the meetings that take place in the building.
- (2) Parking is too limited.
- (3) Traffic on Donner Pass Road is increasingly congested

- (4) Second floor is too warm in the summer
- (5) There is not enough garage space to park rolling equipment
- (6) Auto mechanic space is too small

Action

The Town of Truckee needs to acquire their own building thus vacation space they use on the District's office building. This should be done within five years. The second floor needs to be air-conditioned.

Issue 4.2. Operations facilities

- (1) We need work space for water and line crews to do assembly of materials.
- (2) We need covered space for storage of transformers, wire, pipe, hydrants, and bulk materials.
- (3) We need space for a water and electric meter shop.
- (4) The current headquarters building site is too small to accommodate these needs

Action

Identify parcels that may be suitable for our needs
 Buy approximately ten acres of land for an operations facility.
 Get a consultant to prepare a facilities master plan
 Determine if this building is marketable
 Market a portion of the Southside property
 Talk with TSD, TTSA, Airport, Town of Truckee to determine if there is potential for joint action on certain functions, such as vehicle maintenance, storage of materials.

Issue 5: Technology

The District makes use of a variety of computer and electronics based technologies to do its work. There is a need to make sure the technologies we have acquired are fully functional and are integrated where that is advantageous to the District. The fifth strategic issue concerns just this subject.

Issue 5.1. MIS manager

- (1) We need to improve our technology in areas where it no longer reflects the state of the art.
- (2) Current District staff does not have the knowledge to fully integrate and then continuously manage the technology applications that we now have.
- (3) Our current systems do not communicate with each other.
- (4) Water and electric geographic information systems need to be integrated.
- (5) Our SCADA systems, AS400, and internal network all need to talk to each other. We need to be moving to the position where other future technological systems are likewise integrated into the existing systems (meters, internet, web page, e-commerce)

Action

Internal staff committee will identify where we are, what we have, what are our needs, where we will be in three years. Steve Hollabaugh will be the team leader. Team members will be Mary Chapman, Ed Taylor, Joe Horvath, and Kathy Neus. Their report will be submitted to the General Manager by June 30, 1999

Issue 5.2: Need to get the District's existing technology systems operational

Electric SCADA
Water SCADA
AutoCad
UDS

Action

Joe Horvath will be responsible for getting the AutoCad and UDS operational. Bob Quinn, Joe Horvath and Steve Hollabaugh will be a team to get the electric SCADA fully operational. Ed Taylor will assess the need to upgrade the software driving the water SCADA and write a report on his recommendations.

Issue 6- Metering

The District's water and electric metering needs to be improved.

Issue 6.1: Commercial water meters

- (1) Commercial water meters not 100% operational
- (2) Current technology relies on a remote readout, which is plagued by maintenance problems.

Action

The staff meter committee must choose a technology that lets us read commercial meters every month and be compatible with where we want to go in the future. This will be done during the third quarter of 1999.

Issue 6.2: Electric meters

- (1) Residential and small commercial will be all converted to AMR by the end of 1999.
- (2) Need to convert a total of about 500 commercial network meters to AMR.
- (3) Need a plan to deal with the other commercial meters, based on the rules yet to be issued by CPUC.

Action

Complete installation of residential and small commercial AMR meters. Support Services department will accomplish this task.

Convert network meters to AMR. Support Services Department will accomplish this with help from Vern Smith.